IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2956 OF 2001 (M/S)

Old CMWP No. 32056 of 1994

State of U.P. through the Collector Dehradun

… **Petitioners.**

Versus

1. District Judge, Dehradun
2. Kay Pee Land and Finance Private Ltd. Dheradun, 52, Rajpur Road through its Managing Director.

…. **Respondents.**

Sri Nand Prasad learned Standing Counsel for the State

Dated 22-03-2006

Hon'ble B.S. Verma, J.

By means of the present Writ Petition, the petitioners-State has challenged the judgment and order dated 14-7-1993 passed by the District Judge, Dehradun (respondent no. 1) in Urban Land Ceiling Appeal No. 43 of 1991, Kay Pee Land Finance (Pvt) Ltd. Vs. State of Uttar Pradesh. By the impugned judgment and order ***(Annexure-1to the writ petition),*** respondent no.1 allowed the appeal and declared that the land of plot nos. 62 and 65 of village Jakhan does not fall within the definition of vacant land and there is no excess vacant land with the appellant-respondent no.2.

Brief facts giving rise to the present writ petition are that in pursuance of the provisions of Section 6(1) of the Urban Land (Ceiling and Regulation) Act (***in short the Act*****)** the land holder filed the statement of properties held by him. Notices were issued to the land-holder and draft statement was issued under Section 8(3) of the Act proposing land to the extent of 8793.98 sq.mt. to be declared as surplus vacant land and the proceedings were initiated. The land-holder contested the proceedings and filed objection alleging therein that there is no excess vacant land held by him. The learned Competent Authority after perusing the material on record came to

the conclusion that the landholder was possessed of 2116-34 sqmt. Land of plot nos. 62 and 65 of village Jakhan as surplus vacant land after giving the benefit of 2000 sq.mt. land, which was declared as surplus vacant land and passed the impugned judgment and order dated 27-9-1991. Aggrieved by the said order, land holder (contesting respondent no. 2) preferred appeal before the District Judge. The learned District Judge after hearing both the parties passed the impugned judgment and order dated 14.7.1993 as mentioned above. Aggrieved by the impugned order, the State has come up before this Court in the Writ Petition.

I have heard learned Standing Counsel for the State and perused the record.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> **"4**. ***Abatement of legal proceedings.-All proceedings relation to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***
>
> ***Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."***

As stated by the learned Standing Counsel, Sri Nand Prasad, appearing on behalf of the State, no declaration has been published under Section 10(3) of the principal Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous. Ordered accordingly.

(B.S.Verma, J.)

RCP